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19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA**

21 **SAN FRANCISCO DIVISION**

22 IN RE: UBER TECHNOLOGIES, INC.,  
23 PASSENGER SEXUAL ASSAULT  
24 LITIGATION

25 Case No. 3:23-md-03084-CRB

26 **DEFENDANT UBER TECHNOLOGIES,  
27 INC., RASIER, LLC, AND RASIER-CA,  
28 LLC'S BRIEF IN SUPPORT OF  
PRIVILEGE CLAIMS RELATING TO  
BOARD OF DIRECTORS MATERIALS**

This Document Relates to:

ALL ACTIONS

1 Pursuant to the Special Master's instruction from June 19, 2025, Defendants submit this brief  
 2 in support of their position on the privilege claims made as to materials relating to Uber's Board of  
 3 Directors.<sup>1</sup>

4 This dispute concerns privilege claims asserted for materials relating to Uber's Board of  
 5 Directors, including meeting minutes, presentations, and related materials shared or discussed with the  
 6 Board. By their nature, these materials include significant swaths of information that reflect  
 7 communication with or legal advice from in-house and outside counsel, necessitating redactions. The  
 8 redactions essentially fall into four categories. The first category (comprising the majority of  
 9 redactions) includes communications made, or information shared, by attorneys with the Board as part  
 10 of an attorney-client relationship. The second category encompasses references to ongoing or past  
 11 litigation as part of attorney-client communications and/or work-product in evaluating legal risks in  
 12 anticipation of litigation. The third category includes references to insurance reserves, loss amounts,  
 13 legal costs and settlements—which constitute paradigmatic work-product, as Plaintiffs have previously  
 14 recognized in this litigation. And the final category of redactions consists of communications between  
 15 Uber and its outside counsel, which Plaintiffs have similarly recognized are protected by the attorney-  
 16 client privilege. Because the redactions within each of these categories satisfies the applicable  
 17 standards governing attorney-client privilege and work-product doctrine, the Special Master should  
 18 affirm Defendants' privilege claims.<sup>2</sup>

19 **LEGAL STANDARD**

20 Defendants incorporate by reference the legal attorney-client and work-product standards set  
 21 forth in their prior briefing (Dkts. 2433, 2461, 2528, 2544, and 2580). Those standards boil down to

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22 <sup>1</sup> Following conferrals with Plaintiffs on the scope of the redaction of irrelevant materials, Defendants offered  
 23 to reproduce certain documents with fewer redactions of irrelevant material that, in turn, would otherwise reveal  
 24 material that now requires privilege redactions. Out of 94 documents with redactions to privileged content,  
 25 Plaintiffs have challenged various redactions in 58 documents. These 58 documents have now been submitted  
 for the Special Master's review. While Defendants have also applied redactions to non-responsive,  
 commercially sensitive content, these redactions are not before the Special Master for resolution.

26 <sup>2</sup> As requested by the Special Master, Uber has provided (1) a glossary of terms commonly used in disputed  
 27 documents, (2) a list of names and titles of relevant Uber inside and outside counsel, and (3) a digest of third-  
 parties present in its privilege log. Defense counsel will also be available for any questions the Special Master  
 may have during the review process.

1 the longstanding principle that a corporation's confidential communications with its attorneys are  
 2 entitled to protection just as the communications of a natural person. *See D.I. Chadbourne, Inc. v.*  
 3 *Superior Ct. of City & Cnty. of San Francisco*, 60 Cal. 2d 723, 732-36 (1964) ("[T]he public policy  
 4 behind the attorney-client privilege requires that an artificial person be given equal opportunity with  
 5 a natural person to communicate with its attorney, within the professional relationship, without fear  
 6 that its communication will be made public."). That principle applies equally to board meetings  
 7 minutes and accompanying materials where legal issues are discussed. *See, e.g., S.E.C. v. Roberts*, 254  
 8 F.R.D. 371, 383 (N.D. Cal. 2008) (communications between attorneys and special committee within  
 9 the board of directors formed to conduct internal investigation into securities law violations are  
 10 protected by attorney-client privilege); *Aerojet Rocketdyne, Inc. v. Global Aerospace, Inc.*, 2019 WL  
 11 4929930, \*2 (E.D. Cal. Oct. 7, 2019) (finding Board minutes entitled to be redacted for attorney-client  
 12 privilege where it was a special meeting "called to specifically discuss, seek legal advice, and develop  
 13 a legal strategy related to settlement"); *Great Plains Mut. Ins. Co. v. Mutual Reinsurance Bureau*, 150  
 14 F.R.D. 193 (D. Kan. 1993) (portions of board meeting during which legal issues were discussed were  
 15 held privileged). *Welch v. Board of Directors of Wildwood Golf Club*, 146 F.R.D. 131, 139 (W.D. Pa.  
 16 1993) (privilege successfully asserted for portions of board minutes in which legal advice regarding  
 17 potential litigation was discussed). Even when assessing documents that may be a mix of privileged  
 18 and non-privileged material, courts may lean towards finding the document as a whole privileged.  
 19 *Aerojet Rocketdyne, Inc.*, 2019 WL 4929930, at \*3 (finding the chart as a whole was entitled to  
 20 privilege protection even if every fact or number it contained was not independently privileged).

## 21 ARGUMENT

### 22 I. The Special Master Should Reject Plaintiffs' Non-Specific, Boilerplate Challenges.<sup>3</sup>

23 For nearly every document, Plaintiffs repeat the same generic challenge, claiming that "the  
 24 redacted content appears to concern business strategy, operational decision-making, and corporate risk

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25  
 26 <sup>3</sup> Defendants submit that Plaintiffs have failed to sufficiently challenge JCCP\_MDL\_PRIVLOG110047,  
 27 JCCP\_MDL\_PRIVLOG110059 & JCCP\_MDL\_PRIVLOG110063. Plaintiffs highlighted  
 28 JCCP\_MDL\_PRIVLOG110047 and JCCP\_MDL\_PRIVLOG110063 as priority challenges but their chart sets  
 forth "no" challenge in column AL. Column AL for JCCP\_MDL\_PRIVLOG110059 sets forth that Plaintiffs

assessments—not legal advice sought or provided in a confidential attorney-client communication or legal work product.” The Special Master should reject these boilerplate challenges, because Defendants have satisfied their burden of establishing that the redacted content is privileged. Indeed, as the party claiming privilege, Defendants need only “establish[] the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship.” *Johnson v. Dept. of Transportation*, 109 Cal. App. 5th 917, 936 (2015). Defendants have done so through the privilege log, list of inside and outside counsel, and documents provided for the Special Master’s review. Thus, Plaintiffs must come forward with some particularized basis for challenging privilege. *See id.* (“Once that party establishes facts necessary to support a *prima facie* claim of privilege, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.”). Plaintiffs’ boilerplate challenges are insufficient.

## **II. Common Types of Privilege Claims Present in the Board Materials Should Be Upheld.**

While the documents in question lack full metadata that is ordinarily present with documents produced from their native versions, meeting agendas and/or meeting minutes often provide the necessary framework for evaluating the privilege redactions. Those agendas and minutes typically identify the attorney who presented certain topics to the Board. Beyond that, the majority of Uber’s privilege redactions largely fall within commonly occurring categories. Plaintiffs have not offered any sufficient basis to dispute these types of redactions.

### **A. Communications or Information Shared By Counsel with the Board**

The majority of redactions reflect communications made, or information otherwise shared, by attorneys with the Board as part of an attorney-client relationship. These communications were memorialized as part of meeting minutes or memoranda to the Board. Information shared by attorneys with the Board are often reflected in slide presentations and “pre-read” background materials. For some documents, Plaintiffs have indicated that they are not challenging certain redactions to

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“DO NOT CHALLENGE CORPORATE COMPENSATION MATERIALS OR PRIVATE PLANE USE POLICY” and the entirety of the “2021.11.1 Comp Materials” relates to corporate compensation.

1 information shared by in-house attorneys with the Board. *See JCCP\_MDL\_PRIVLOG108930* (not  
 2 challenging pages 65-87 regarding CLO Update), *JCCP\_MDL\_PRIVLOG108935* (not challenging  
 3 pages 88 and 138-52 regarding litigation updates). However, Plaintiffs are inexplicably challenging  
 4 other redactions reflecting information communicated between Uber's in-house counsel and its Board.  
 5 *See JCCP\_MDL\_PRIVLOG110193* (challenging all redactions, including "Antitrust Training" by  
 6 Tony West and Tammy Albaran at pages 196-204 and "CLO Board of Directors Update" at pages  
 7 206-215).

8 The only explanation for Plaintiffs' inconsistent approach appears to be their view that the view that the  
 9 *content* of the redactions falling within the latter category are related to business issues, rather than  
 10 legal advice. That fundamentally misapprehends the relevant standard. As the Special Master has  
 11 recognized, "the focus of the inquiry is the dominant purpose of the relationship between the parties  
 12 to the communication." Special Master's Ruling on Objection Regarding  
 13 *JCCP\_MDL\_PRIVLOG020615* (Apr. 11, 2025) (quoting Dkt. 2168 at 2 and *Clark v. Superior Ct.*,  
 14 196 Cal. App. 4th 37, 51 (2011)). "[I]t is not the dominant purpose of a particular communication that  
 15 dictates whether the attorney-client privilege is applicable; rather the issue is what was *the dominant  
 16 purpose of the relationship*. . . . If the dominant purpose of the relationship was attorney-client at the  
 17 time of the communications, they are privileged." *Id.* (quoting *McAdam v. State Nat. Ins. Co.*, 15 F.  
 18 Supp. 3d 1009, 1015 (S.D. Cal. 2014)). Accordingly, it makes no difference whether, as Plaintiffs  
 19 claim, the content "appears to concern business strategy, operational decision-making, and corporate  
 20 risk assessments." This is because "[n]either the statutes articulating the attorney-client privilege nor  
 21 the cases which have interpreted it make any differentiation between 'factual' and 'legal'  
 22 information." *DP Pham, LLC v. Cheadle*, 246 Cal. App. 4th 653, 664 (2016).

23 The Board materials submitted for the Special Master's review are protected under these  
 24 principles because they reflect attorney-client privileged communications (through meeting minutes  
 25 and memoranda) and information that was transmitted from Uber's in-house and outside counsel to  
 26  
 27

1 the Board (through slide presentations and appendices<sup>4</sup>). “The dominant purpose of the relationship”  
 2 between Uber’s in-house counsel and the Board was an attorney-client relationship, therefore the  
 3 communications should remain privileged.<sup>5</sup>

4 **B. Discussions of Ongoing or Past Litigation or Claims that Reflect Work Product**

5 Defendants have made appropriate redactions to certain references to ongoing or past litigation  
 6 or legal claims.<sup>6</sup> Not only are these references often part of attorney-client communications and  
 7 information shared by counsel with the Board, but they should also be protected as work product. As  
 8 the Special Master has seen through review of other privileged content over the past several months,  
 9 one of the key functions of Uber’s in-house counsel team is to advise the company and assess and  
 10 manage legal risks in anticipation of litigation. As demonstrated by the volumes of documents already  
 11 made available to the Special Master, this work includes reporting on ongoing litigation, managing  
 12 legal risks based on the regulatory environment impacting Uber’s business, and facilitating internal  
 13 investigations and audits. Some of this work product is reflected in the redactions now pending before  
 14 the Special Master.

15 For example, several redactions relate to a Special Matters Committee (“SMC”) of the Board  
 16 of Directors.<sup>7</sup> The SMC was created to provide oversight of investigations into possible incidents of  
 17 non-compliance with laws and regulations and potential or actual litigation. John Dwyer, outside  
 18 counsel at Cooley LLP, has previously explained the genesis of the SMC and legal counsel’s  
 19 involvement in the SMC as part of a declaration submitted in *Boston Retirement Sys. v. Uber*  
 20 *Technologies, Inc.*, No. 3:19-cv-06361-RS (Dkt. 380-2). As Mr. Dwyer explained, as outside counsel,

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 22 <sup>4</sup> See, e.g., JCCP\_MDL\_PRIVLOG110048 at 7 (Minutes Item 6); JCCP\_MDL\_PRIVLOG110050 at 1 (T. West  
 23 presenting on Board Nominations and Governance Review), 17-19 (Board Nomination slides), 21-26  
 24 (Governance Review slides); JCCP\_MDL\_PRIVLOG110060 at 2-3, 5 (T. West presenting on Corporate  
 25 Matters, Risk Management & Oversight, and Legal Updates), 3-4 (Ms. Zefo co-presenting on Privacy &  
 26 Cybersecurity).

27 <sup>5</sup> Work product protection may also apply to provide additional basis for redactions. For example, assessments  
 28 of claim values and settlement amounts prepared by or at the direction of counsel should be protected as work  
 product even when that information is conveyed to the Board through non-lawyers.

<sup>6</sup> See, e.g., JCCP\_MDL\_PRIVLOG110046 at 2 (Minutes Item 5), 40-42 (litigation discussion in Final Valuation  
 Report).

<sup>7</sup> See e.g., JCCP\_MDL\_PRIVLOG108929 at 18-24, 621-25.

1 he was responsible for providing updates to the Board and the SMC and for providing legal analyses  
 2 and attorney mental impressions to PricewaterhouseCoopers LLP (“PwC”), Uber’s outside auditor.  
 3 Dwyer Decl. at ¶¶ 2-3. These mental impressions are one example of the work product that Defendants  
 4 have redacted to protect.

5       **C. References to Insurance Reserves and Loss Amounts, Legal Costs, and**  
 6       **Settlements**

7       Uber has also redacted references to insurance reserves, loss amounts, legal costs, and  
 8 settlements. This information is protected as attorney work product. Courts across the country have  
 9 recognized that attorney impressions of the value of potential claims are “protected from discovery as  
 10 opinion work-product” because such “figures reveal the mental impressions, thoughts, and  
 11 conclusions, of an attorney in evaluating a legal claim.” *Rhone-Poulenc Rorer Inc. v. Home Indem.*  
 12 *Co.*, 139 F.R.D. 609, 613-15 (E.D. Pa. 1991) (finding that risk management documents that contain  
 13 “individual case reserves”—i.e., funds set aside for liabilities—are protected when calculated by  
 14 attorneys, as they reflect “an assessment of the value of the claim”); *United States v. Frederick*, 182  
 15 F.3d 496, 501 (7th Cir. 1999) (“Suppose a lawyer prepared an estimate of his client’s damages; the  
 16 estimate would be numerical, but insofar as it reflected the lawyer’s professional assessment of what  
 17 to ask the jury for it would be attorney work product”); *Schreib v. Am. Fam. Mut. Ins. Co.*, 304 F.R.D.  
 18 282, 286–87 (W.D. Wash. 2014) (refusing to compel production of loss reserve documents because  
 19 “by definition [they] reflect the mental impressions, thoughts, and conclusions of attorneys or  
 20 employees evaluating the merits and risk of a legal claim”); *Bondex Int’l, Inc. v. Hartford Acc. &*  
*21 Indem. Co.*, No. 1:03CV1322, 2006 WL 355289, at \*2 (N.D. Ohio Feb. 15, 2006) (“The individual  
 22 case reserve figures reveal the mental impressions, thoughts, and conclusions of an attorney in  
 23 evaluating a legal claim. By their very nature they are prepared in anticipation of litigation, and  
 24 consequently, they are protected from discovery as opinion work-product.”).

25       As explained in *Rhone-Poulenc*, a party “should not be forced to provide materials to its  
 26 opponent that necessarily reflect its lawyers’ mental impressions regarding the litigation and contain[]  
 27 its agents’ mental impressions concerning the cost of the litigation” because such a rule could make it

1 difficult for defendants to plan for their defense and could lead litigants to not “properly document  
 2 and consider all the factors that bear upon the decision to try or settle lawsuits.” 139 F.R.D. at 615.  
 3 For similar reasons, courts regularly apply work-product protection to materials that contain attorney  
 4 mental impressions regarding potential and completed settlements. *See Dairyland Power Co-op. v.*  
 5 *United States*, 79 Fed. Cl. 709, 722 (2007) (“Determining acceptable settlement amounts can be part  
 6 of an attorney’s planning for litigation, thereby making such deliberations qualify as attorney work  
 7 product.”); *see also Chemcentral/Grand Rapids Corp. v. US EPA*, No. 91 C 4380, 1992 WL 724965,  
 8 at \*9 (N.D. Ill. Aug. 20, 1992) (“[D]ocuments relating to settlement negotiations and the avoidance of  
 9 anticipated litigation are also protected by work product immunity.”); *Nationwide Mut. Ins. Co. v.*  
 10 *LaFarge Corp.*, No. H-90-239, 1994 U.S. Dist. LEXIS 3851, at \*29–30 (D. Md. Jan. 3, 1994)  
 11 (“Settlement strategy is obviously based on the mental impressions and conclusions of a party and on  
 12 the legal theories on which such conclusions are based.”); *McCook Metals LLC v. Alcoa Inc.*, 192  
 13 F.R.D. 242, 263 (N.D. Ill. 2000) (finding documents concerning settlement of a separate litigation,  
 14 including letters between in-house counsel and management regarding litigation and licenses, to be  
 15 protected by attorney-client privilege and as work product).

16 The same principles apply here. Indeed, Plaintiffs have essentially recognized as much in  
 17 previously agreeing that they would presumptively not challenge Uber’s clawback of privileged  
 18 information reflecting insurance loss or reserve amounts or settlements. While Plaintiffs seem to  
 19 acknowledge that this type of information is protected (*see JCCP\_MDL\_PRIVLOG108930* (no  
 20 challenge to redactions to settlement amount)), to the extent that they maintain any of their challenges  
 21 as to insurance reserves, loss amounts, legal costs, and settlements, Defendants’ work product claims  
 22 should be upheld.

23       **D. References to Communications Between Uber and Outside Counsel**

24       As part of the agreement between the parties to facilitate the expedited review of these  
 25 documents by the Special Master, Plaintiffs have agreed that they do not dispute privilege claims based  
 26 on outside counsel communications. This agreement is reflected in several of Plaintiffs’ challenges.

1 See JCCP\_MDL\_PRIVLOG108929 (not challenging redactions relating to Covington<sup>8</sup>) and  
 2 JCCP\_MDL\_PRIVLOG108930 (not challenging redactions relating to outside counsel). To the extent  
 3 Plaintiffs' challenges inadvertently include redactions based on outside counsel communications,  
 4 those redactions should be upheld, consistent with the parties' agreement and the applicable law.<sup>9</sup> For  
 5 clarity, Defendants are providing an updated list of in-house and outside counsel for the Special  
 6 Master's review.

7 **III. Additional Reasons Support Redactions as to JCCP\_MDL\_PRIVLOG097384.**

8 As further support for the privilege claims before the Special Master, Defendants provide a  
 9 declaration from Katie Waitzman, Chief Deputy General Counsel (attached as Exhibit A). Ms.  
 10 Waitzman provides additional factual information regarding a slide contained in  
 11 JCCP\_MDL\_PRIVLOG097384. As Ms. Waitzman's declaration confirms, this slide was prepared by  
 12 counsel in response to, and in anticipation of, litigation and should remain protected.

13 **CONCLUSION**

14 Defendants' privilege redactions should be upheld. To the extent that there is any other factual  
 15 context that the Special Master requires as part of this expedited review, Defendants request the  
 16 opportunity to confer with the Special Master's team on an *ex parte* basis or respond to any discrete  
 17 issue or redaction in writing.

21 <sup>8</sup> In 2017, Uber retained Eric Holder and Tammy Albarran (then-outside counsel at Covington & Burling) to  
 22 conduct a review of certain internal policies and procedures in light of allegations of harassment, discrimination  
 23 and retaliation made by a former engineer at Uber. Uber employees, such as Liane Hornsey (Senior Vice  
 24 President and Chief Human Resources Officer), then implemented the recommendations made by Covington.  
 25 The resulting work and report is referred to in certain Board documents as the "Holder report." See, e.g.,  
 26 UBER\_JCCP\_MDL\_005767105. In this context, "Holder" references work or communications with outside  
 27 counsel Eric Holder and should not be subject to challenge, per the parties' agreement and the applicable law.

21 <sup>9</sup> JCCP\_MDL\_PRIVLOG110055 at 68-87 (BOD, Committee and Individual Director Performance Evaluations  
 22 by Wachtell Lipton), 96-114 (Uber Governance Risk Assessment by Covington & Burling);  
 23 JCCP\_MDL\_PRIVLOG110062 at 50-68 (BOD, Committee and Individual Director Performance Evaluations  
 24 by Wachtell Lipton), 70-100 (Uber Governance Risk Assessment by Covington & Burling);  
 25 JCCP\_MDL\_PRIVLOG110066 at 44-58 (BOD, Committee and Individual Director Performance Evaluations  
 26 by Wachtell Lipton).

1 DATED: June 24, 2025

Respectfully submitted,

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